

1 Michelle R. Saavedra
Michael W.L. McCrory
2 Principal Assistant City Attorneys for
MICHAEL G. RANKIN
3 City Attorney
P.O. Box 27210
4 Tucson, AZ 85726-7210
Michelle.Saavedra@tucsonaz.gov
State Bar No. 25728
5 Pima County Computer No. 66163
Michael.McCrory@tucsonaz.gov
6 State Bar Computer No. 3899
Pima County Computer No. 37268
7 Telephone: (520) 791-4221
Fax: (520) 623-9803
8 *Attorneys for Defendant City of Tucson*

9 **IN THE UNITED STATES DISTRICT COURT**
10 **FOR THE DISTRICT OF ARIZONA**

11 CARRIE FERRARA CLARK,

4:14-cv-02543

12 Plaintiff,

**DEFENDANT’S ANSWER TO THIRD
13 AMENDED COMPLAINT**

14 vs.

(Hon. Cindy Jorgenson)

15 CITY OF TUCSON,

16 Defendant.

17 For its Answer to Plaintiff’s Third Amended Complaint (“TAC”), Defendant City
18 of Tucson, by and through counsel undersigned, hereby admits, denies and alleges as
19 follows: (each numbered answer corresponds with Plaintiff’s paragraphs):

20 **PARTIES, JURISDICTION AND VENUE**

21 1. Upon information and belief, admits Plaintiff is a resident of Pima County,
22 Arizona.

23 2. Admits that the City of Tucson is an incorporated municipality situated in
24 Pima County.

25 3. Admits and alleges Defendant City of Tucson complied with the provisions
26 set forth in the Civil Rights Act of 1964, as amended by the Pregnancy Discrimination Act,
27 42 U.S.C. §§ 2000e *et seq.* (Title VII), and the Fair Labor Standards act (FLSA), 29 U.S.C.
28 § 203(e)(1).

1 4. Admits.

2 5. Admits.

3 6. Admits.

4 7. Denies and alleges Defendant is not liable to Plaintiff for any cause of action
5 alleged in her TAC and Defendant did not cause Plaintiff to suffer any injuries or damages.

6 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

7 8. Admits that on or about July 31, 2013, Plaintiff filed a written charge of sex
8 discrimination with the Arizona Attorney General’s Office, Civil Rights Division,
9 (“ACRD”), pursuant to the Arizona Civil Rights Act, § 41-1481(A). Defendant also
10 alleges that on or about April 21, 2014, based upon its investigation, the Office of the
11 Attorney General, Civil Rights Division dismissed Plaintiff’s case concluding the evidence
12 obtained did not establish any violation of statute(s) on the part of the City of Tucson. A
13 Notice of Right to Sue letter was issued to Plaintiff on April 24, 2014. Defendant
14 affirmatively alleges that Plaintiff’s right to sue is limited to the allegations in the ACRD
15 complaint and applicable statutes of limitations.

16 9. Defendant admits that a formal complaint was filed with the City’s Equal
17 Opportunity Programs Division (EOPD) on or about March 27, 2015, alleging wrongful
18 conduct by Capt. Langejans. Defendant affirmatively alleges that EOPD had not
19 completed the processing of that complaint at the time the First Amended Complaint was
20 submitted to the Court and Plaintiff therefore failed to exhaust her City remedies prior to
21 pursuing legal action.

22 10. Defendant admits those charges contained within the ACRD complaint were
23 timely filed pursuant to the Arizona Civil Rights Act.

24 **GENERAL ALLEGATIONS**

25 11. Admits.

26 12. Admits at the time Plaintiff filed her original Complaint she was a Paramedic
27 with the Tucson Fire Department (“TFD”) and alleges Plaintiff applied for and was
28 selected for the position of Fire Prevention Inspector for TFD, which was a lateral transfer

1 from her previous rank of Paramedic. That transfer was effective August 10, 2014 through
2 May 1, 2016, which is when Plaintiff was reassigned to Operations as a Paramedic.
3 Plaintiff requested to be demoted to a Firefighter position, and since June 26, 2016 she has
4 been a Firefighter.

5 13. Upon information and belief, admits Plaintiff gave birth to her first son on
6 July 19, 2012, and she returned to work on October 27, 2012.

7 14. Admits when Plaintiff returned to work she returned to her assignment as a
8 Swing Paramedic on "C" Shift, which means she continued to be assigned to work at
9 different stations depending on TFD's needs. Defendant also alleges that Plaintiff
10 requested that she be assigned to stations on the eastside of town, preferably Station 12,
11 and TFD assigned her to the requested stations whenever possible.

12 15. Admits that Plaintiff informed BC McDonough that she preferred to be
13 assigned to stations with private rooms and those on the east side.

14 16. Denies.

15 17. Admits there were discussions about temporarily assigning Plaintiff to
16 Station 20.

17 18. Admits.

18 19. Upon information and belief, admits that on or about October 27, 2012,
19 Paramedic Jeff Todd told Plaintiff that he wanted to move to another station and would
20 like to help her. Defendant affirmatively alleges that under TFD's Rules of Assignment
21 members are not permitted to swap or exchange assignments or positions. Defendant
22 further alleges that Jeff Todd was moved from Station 12 for reasons unrelated to Plaintiff
23 and not because he requested to be moved.

24 20. Admits Paramedic Todd sent an email to BC Stevens asking for a transfer to
25 Station 20, but Defendant denies the remaining material allegations contained in paragraph
26 20.

1 21. Defendant is without knowledge or information sufficient to form a belief as
2 to the truth of the material allegations contained in paragraph 21 of Plaintiff's TAC and,
3 therefore, denies the same.

4 22. Admits.

5 23. Defendant is without knowledge or information sufficient to form a belief as
6 to the truth of the material allegations contained in paragraph 23 of Plaintiff's TAC and,
7 therefore, denies the same.

8 24. Defendant is without knowledge or information sufficient to form a belief as
9 to the truth of the material allegations contained in paragraph 24 of Plaintiff's TAC and,
10 therefore, denies the same.

11 25. Admits Paramedic Todd did not get transferred to Station 20 for legitimate
12 business reasons and denies that there were any similarly situated employees who were
13 previously granted similar transfers.

14 26. Denies that Paramedic Todd's request was granted and alleges Paramedic
15 Todd was moved from Station 12 for legitimate business reasons unrelated to Plaintiff, and
16 not because he requested to leave or opted to move to swing. Defendant is without
17 knowledge or information sufficient to form a belief as to the truth of the remaining
18 material allegations contained in paragraph 26 of Plaintiff's TAC and, therefore, denies the
19 same.

20 27. Admits that on or about November 9, 2012, Plaintiff submitted a request to
21 be temporarily assigned to TFD Station 12. Defendant also alleges that the reason for
22 Plaintiff's request was that Station 12 was closer to her mother, which made it easier for
23 her mother to pick up expressed milk to feed her son during her work shifts. Defendant is
24 without knowledge or information sufficient to form a belief as to the truth of the
25 remaining allegations contained in paragraph 27 of Plaintiff's TAC and, therefore, denies
26 the same.

27

28

1 28. Defendant is without knowledge or information sufficient to form a belief as
2 to the truth of the material allegations contained in paragraph 28 of Plaintiff's TAC and,
3 therefore, denies the same.

4 29. Admits that in early November 2012, DC Nied and DC Rodriguez met with
5 Plaintiff.

6 30. Denies.

7 31. Admits Plaintiff remained at Station 12 until after the holiday season through
8 the efforts of DC Nied and DC Rodriguez.

9 32. Admits Plaintiff remained assigned to Station 12 through January 1, 2013,
10 due to the efforts of DC Nied and DC Rodriguez.

11 33. Denies.

12 34. Defendant is without knowledge or information sufficient to form a belief as
13 to the truth of the material allegations contained in paragraph 34 of Plaintiff's TAC and,
14 therefore, denies the same.

15 35. Defendant is without knowledge or information sufficient to form a belief as
16 to the truth of the material allegations contained in paragraph 35 of Plaintiff's TAC and,
17 therefore, denies the same.

18 36. Admits on January 7, 2013, Martina Macias, Senior Equal Opportunity
19 Specialist at the City of Tucson's Office of Equal Opportunity Programs ("OEOP")
20 conducted an intake interview of Plaintiff. Defendant alleges that at that time, Plaintiff
21 described her version of what occurred with her request to be assigned to Station 12.
22 Defendant also alleges Plaintiff was not subjected to any discrimination.

23 37. Defendant denies that Ms. Macias told Plaintiff she had a valid claim.
24 Defendant alleges Ms. Macias told Plaintiff she could file a complaint with OEOP and also
25 told her she could fax the complaint in if she was unable to drop it off at their office.
26 Plaintiff chose not to file a complaint with OEOP.

27 38. Denies.

28

1 39. Admits on March 20, 2013, Plaintiff made repeated telephone calls to DC
2 Rodriguez and AC Fischback. Defendant denies the remaining material allegations
3 contained in paragraph 39.

4 40. Admits AC Fischback received a call from Plaintiff sometime in the early
5 evening of March 20, 2013, placed Plaintiff on hold and returned with DC Rodriguez and
6 HR Manager Acedo. Defendant is without knowledge or information sufficient to form a
7 belief as to the truth of the remaining material allegations contained in paragraph 40 of
8 Plaintiff's TAC and, therefore, denies the same.

9 41. Admits Plaintiff was scheduled to work at Station 9 and that DC Rodriguez
10 told Plaintiff something to the effect that it was the only assignment open. Defendant
11 denies the remaining material allegations contained in paragraph 41 of Plaintiff's TAC.

12 42. Admits Plaintiff and HR Manager Acedo discussed the availability of private
13 rooms for Plaintiff to express milk at Station 9. Defendant denies the remaining material
14 allegations contained in paragraph 42 of Plaintiff's TAC.

15 43. Admits Plaintiff explained that she pumped every 2-3 hours, including
16 throughout the night, and that she felt awakening her supervisors to leave their rooms was
17 unreasonable, that HR Manager Acedo was concerned about the extent to which she was
18 expressing milk and that Acedo was concerned about the impact on her work performance.
19 Defendant denies the remaining material allegations contained in paragraph 43 of
20 Plaintiff's TAC.

21 44. Admits Plaintiff made the statement "you are out of your friggin' mind" on
22 two separate telephone calls and admits DC Rodriguez and AC Fischback agreed that
23 waking up her superiors to express milk was not ideal. Defendant denies the remaining
24 material allegations contained in paragraph 44 of Plaintiff's TAC.

25 45. Defendant is without knowledge or information sufficient to form a belief as
26 to the truth of the material allegations contained in paragraph 45 of Plaintiff's TAC and,
27 therefore, denies the same.

28 46. Admits.

1 47. Denies.

2 48. Upon information and belief, admits Plaintiff contacted C Shift Union
3 Griever Sloan Tamietti to accompany her to the meeting. Defendant alleges that under
4 City of Tucson Administrative Directives and the International Association of Fire
5 Fighters Local 479 and City of Tucson Labor Agreement there was no requirement for
6 Sloan Tamietti to be present for the meeting.

7 49. Admits DC Rodriguez told Union Griever Tamietti that he did not need to be
8 present for the meeting. Defendant alleges Union Griever Tamietti was allowed to be
9 present even though this was not a requirement due to the level of discipline being
10 contemplated.

11 50. Admits Union Griever Tamietti was allowed to be present for the meeting
12 with Plaintiff.

13 51. Admits Plaintiff was provided documentation of verbal counseling for using
14 the words “you’re out of your friggin’ mind” two times and hanging up on her superiors
15 two times during the March 20, 2013, phone calls.

16 52. Denies.

17 53. Admits.

18 54. Defendant is without knowledge or information sufficient to form a belief as
19 to the truth of the material allegations contained in paragraph 54 of Plaintiff’s TAC and,
20 therefore, denies the same.

21 55. Defendant is without knowledge or information sufficient to form a belief as
22 to the truth of the material allegations contained in paragraph 55 of Plaintiff’s TAC and,
23 therefore, denies the same.

24 56. Denies.

25 57. Defendant alleges AC Fischback responded that Station 12 was not on the
26 list provided by the City of Tucson’s OEOP department as a station with a locked door on
27 the private room.

28

1 58. Admits AC Fischback made a reference to the filing of a complaint with the
2 City's OEOP.

3 59. Admits AC Fischback made a reference to the filing of a complaint with the
4 City's OEOP.

5 60. Denies and alleges Plaintiff was not reassigned to a firefighter position and
6 TFD does not provide individual employees with "formal notice" of reassignments.
7 Defendant further alleges that nothing in Plaintiff's assignment violated TFD's Manual of
8 Operations and/or applicable department policies and procedures.

9 61. Defendant is without knowledge or information sufficient to form a belief as
10 to the truth of the material allegations contained in paragraph 61 of Plaintiff's TAC and,
11 therefore, denies the same.

12 62. Admits on or about July 19, 2013, TFD issued a new nursing room policy.
13 Defendant is without knowledge or information sufficient to form a belief as to the truth of
14 the remaining material allegations contained in paragraph 62 of Plaintiff's TAC and,
15 therefore, denies the same.

16 63. Defendant is without knowledge or information sufficient to form a belief as
17 to the truth of the material allegations contained in paragraph 63 of Plaintiff's TAC and,
18 therefore, denies the same.

19 64. Admits that on or about July 19, 2013, JoAnn Acosta (Acedo) had a
20 conversation with Plaintiff regarding her temporary assignment to Station 6 due to her
21 need to express milk. Mrs. Acosta referenced the fact that Plaintiff's son had turned one
22 year and based on that her special/temporary assignment at Station 6 would expire unless
23 she submitted a memo requesting an extension due to an ongoing need to express milk.
24 Defendant also alleges that Plaintiff submitted a memo requesting an extension on July 27,
25 2013. Defendant further alleges that Mrs. Acosta sent a memorandum to Plaintiff on
26 August 30, 2013, recapping the conversation they had on July 19th and informing Plaintiff
27 that the department granted her an extension to remain at Station 6 for 3 months, or until
28 October 18, 2013, at which time her needs would be reevaluated.

1 65. Denies and alleges DC Rodriguez and AC Fischback told Plaintiff on or
2 about March 20, 2013 that she would be temporarily assigned to Station 6 due to her need
3 to express milk. Defendant also alleges that on July 27, 2013, Plaintiff submitted a memo
4 requesting a continued assignment to Station 6 due to her need to continue expressing milk
5 for her son. Defendant further alleges on November 3, 2013, Plaintiff sent an email
6 through her chain of command stating she had a need to be at Station 6 “until [she]
7 finish[ed] nursing [her] second child.” In response to Plaintiff’s email, she was contacted
8 on November 4, 2013, for clarification about what she meant. Plaintiff stated she still had a
9 need to express milk for her first child. Plaintiff was granted an extension and told that the
10 department would check in with her in a few months (January 2014), and Plaintiff was
11 asked to bring it to the department’s attention if she no longer had a need to express milk.

12 66. Upon information and belief, admits that on July 31, 2013, Plaintiff filed a
13 written charge of discrimination with the Arizona Attorney General’s Office, Civil Rights
14 Division pursuant to the Arizona Civil Rights Act, § 41-1481(A).

15 67. Defendant is without knowledge or information sufficient to form a belief as
16 to the truth of the material allegations contained in paragraph 67 of Plaintiff’s TAC and,
17 therefore, denies the same.

18 68. Admits.

19 69. Denies.

20 70. Admits that on or about May 22, 2014, Plaintiff filed a notice of claim
21 alleging she had experienced sex discrimination and retaliation since returning to work in
22 late October 2012.

23 71. Upon information and belief, admits Plaintiff was assigned to light duty on
24 June 16, 2014, per her request.

25 72. Admit HR Manager Acosta (Acedo) was checking in with Plaintiff
26 periodically to see if she still had the need to express milk while at work. Also, refer to
27 response to paragraph 64 above.

28

1 73. Denies that Captain McDonough took Plaintiff out to drill by herself and
2 admits Plaintiff submitted a memo on or about June 19, 2014, regarding a drill that took
3 place on May 22, 2014. Defendant also alleges Plaintiff received and educational
4 counseling addressing her insubordination, inappropriate conduct, and carelessness during
5 the drill. Defendant further alleges that Captain McDonough and Firefighter Tyler
6 McKendrick also submitted memorandums regarding this same drill. Defendant is without
7 knowledge or information sufficient to form a belief as to the truth of the remaining
8 material allegations contained in paragraph 73 of Plaintiff's TAC and, therefore, denies the
9 same.

10 74. Defendant is without knowledge or information sufficient to form a belief as
11 to the truth of the material allegations contained in paragraph 74 of Plaintiff's TAC and,
12 therefore, denies the same.

13 75. Admits that firefighters on light duty were required to provide a doctor's
14 note regarding their ability to engage in exercise and firefighters were expected to exercise
15 where they were assigned. Upon information and belief, admit Plaintiff was told that she
16 must start work at 7:00 a.m.

17 76. Defendant is without knowledge or information sufficient to form a belief as
18 to the truth of the material allegations contained in paragraph 76 of Plaintiff's TAC and,
19 therefore, denies the same.

20 77. Denies and alleges it is standard policy that anyone assigned to light duty is
21 required to provide a doctor's note indicating the extent to which exercise is medically
22 appropriate.

23 78. Admits that TFD's telestaff records show that the change was made by
24 payroll, which would have been done based on information about Plaintiff's time at work.
25 Defendant is without knowledge or information sufficient to form a belief as to the truth of
26 the remaining material allegations contained in paragraph 78 of Plaintiff's TAC and,
27 therefore, denies the same.

28 79. Denies.

1 80. Denies.

2 81. Denies.

3 82. Denies.

4 83. Denies.

5 84. Admits and alleges on or about June 4, 2014, DC Rodriguez and DC Baker
6 became aware that Capt. Clark worked two trade shifts for Plaintiff. Plaintiff was
7 informed that this type of work trade was not acceptable and not an approved practice.
8 Plaintiff was referred to the TFD Manual of Operations and told she did not possess the
9 “equal qualifications” to work in a Captain’s position.

10 85. Admits. Also, refer to response to paragraph 84 above.

11 86. Defendant is without knowledge or information sufficient to form a belief as
12 to the truth of the material allegations contained in paragraph 86 of Plaintiff’s TAC and,
13 therefore, denies the same.

14 87. Admits that on June 4, 2014, DC Rodriguez informed Plaintiff that pursuant
15 to TFD MOPS and the Local 479 labor contract, trades must be in class with equal
16 qualification and she did not possess the equal qualifications to work in a Captain position.
17 Defendant denies the remaining allegations contained in paragraph 87 of Plaintiff’s TAC.

18 88. Admits.

19 89. Defendant is without knowledge or information sufficient to form a belief as
20 to the truth of the material allegations contained in paragraph 89 of Plaintiff’s TAC and,
21 therefore, denies the same.

22 90. Admits Plaintiff was selected for the position of Fire Prevention Inspector
23 for TFD, which was a lateral transfer from her previous rank of Paramedic.

24 91. Denies.

25 92. Denies

26 93. Denies.

27

28

1 94. Defendant is without knowledge or information sufficient to form a belief as
2 to the truth of the material allegations contained in paragraph 94 of Plaintiff's TAC and,
3 therefore, denies the same.

4 95. Defendant is without knowledge or information sufficient to form a belief as
5 to the truth of the material allegations contained in paragraph 95 of Plaintiff's TAC and,
6 therefore, denies the same.

7 96. Defendant is without knowledge or information sufficient to form a belief as
8 to the truth of the material allegations contained in paragraph 96 of Plaintiff's TAC and,
9 therefore, denies the same.

10 97. Defendant is without knowledge or information sufficient to form a belief as
11 to the truth of the material allegations contained in paragraph 97 of Plaintiff's TAC and,
12 therefore, denies the same.

13 98. Defendant is without knowledge or information sufficient to form a belief as
14 to the truth of the material allegations contained in paragraph 98 of Plaintiff's TAC and,
15 therefore, denies the same.

16 99. Defendant is without knowledge or information sufficient to form a belief as
17 to the truth of the material allegations contained in paragraph 99 of Plaintiff's TAC and,
18 therefore, denies the same.

19 100. Denies.

20 101. Defendant is without knowledge or information sufficient to form a belief as
21 to the truth of the material allegations contained in paragraph 101 of Plaintiff's TAC and,
22 therefore, denies the same.

23 102. Denies.

24 103. Upon information and belief, admits Plaintiff was on leave from September
25 through November 2014, after the birth of her second child.

26 104. Defendant is without knowledge or information sufficient to form a belief as
27 to the truth of the material allegations contained in paragraph 104 of Plaintiff's TAC and,
28 therefore, denies the same.

1 105. Defendant is without knowledge or information sufficient to form a belief as
2 to the truth of the material allegations contained in paragraph 105 of Plaintiff's TAC and,
3 therefore, denies the same.

4 106. Upon information and belief, admits when Plaintiff returned from leave on or
5 about November 24, 2014, she began her position as a Fire Inspector in the Fire Prevention
6 Division.

7 107. Defendant is without knowledge or information sufficient to form a belief as
8 to the truth of the material allegations contained in paragraph 107 of Plaintiff's TAC and,
9 therefore, denies the same.

10 108. Denies that Plaintiff was subjected to any actions of behaviors rising to the
11 level of intimidation and/or hostile work environment and alleges TFD addressed
12 Plaintiff's concerns regarding Capt. Langejans in a timely and appropriate manner.
13 Defendant denies all other material allegations contained in paragraph 108 of Plaintiff's
14 TAC.

15 109. Admits there was a Strategic Planning Meeting on or about December 4,
16 2014, and admits that after said meeting Capt. Langejans, Inspectors Tom Sisterman and
17 John Vincent engaged in a conversation. Defendant is without knowledge or information
18 sufficient to form a belief as to the truth of the remaining material allegations contained in
19 paragraph 109 of Plaintiff's TAC and, therefore, denies the same.

20 110. Defendant is without knowledge or information sufficient to form a belief as
21 to the truth of the material allegations contained in paragraph 110 of Plaintiff's TAC and,
22 therefore, denies the same.

23 111. Upon information and belief, admits that on December 5, 2014, Inspectors
24 Sisterman, Vincent, and December told Captain Gordon Clark, Plaintiff's husband, that
25 Capt. Langejans had made statements about Plaintiff and Gordon Clark. Further admits
26 that Gordon Clark notified his chain of command about what the inspectors had
27 communicated to him.

28

1 112. Alleges Plaintiff was interviewed on January 22, 2015, during TFD's internal
2 investigation into the allegations against Capt. Langejans. Upon information and belief,
3 allege before that date Plaintiff had not communicated any concerns relating to Capt.
4 Langejans to DC Mike Carsten or any other supervisory personnel. Defendant also alleges
5 that Plaintiff submitted an email on February 11, 2015, requesting that she be included in a
6 meeting AC Laura Baker had scheduled with the TFD employees who had submitted
7 memos regarding Capt. Langejans.

8 113. Admits that on January 14, 2015, Inspector John Vincent submitted a memo
9 titled, "Request for transfer within Fire Prevention Division," and admits on January 15,
10 2015, Inspector Tom Sisterman submitted a memo titled, "Hostile Work Environment in
11 the Fire Prevention Division." Defendant alleges the contents of those memos speak for
12 themselves and further alleges these memos, as well as the memo submitted by Gordon
13 Clark lead to TFD's internal investigation as discussed in paragraph 112, above.

14 114. Denies and alleges TFD conducted an internal investigation into the
15 allegations contained in the memos mentioned in paragraph 113, above, and further alleges
16 TFD's investigation was thorough and Capt. Langejans' chain of command addressed the
17 situation appropriately.

18 115. Admits on January 15, 2015, DC Mike Carsten received a memo authored by
19 Gordon Clark dated January 14, 2015, which was titled "Report of Wrongful Conduct."
20 Defendant alleges the content of said memo speaks for itself and this memo did make it up
21 the chain of command to Chief Critchley. On January 16, 2015, Chief Critchley
22 authorized an internal investigation into the allegations contained in Gordon Clark's memo
23 and the memos submitted by Inspector Sisterman and Inspector Vincent as discussed in
24 paragraphs 113 and 114, above.

25 116. Admits that Inspectors Sisterman and Vincent's memos made it up the chain
26 of command to Chief Critchley and that Chief Critchley authorized an internal
27 investigation into these memos and Gordon Clark's memo as discussed in paragraphs 113
28 through 115, above.

1 117. Denies.

2 118. Denies.

3 119. Admits that on February 12, 2015, AC Laura Baker and DC Carsten met
4 with Plaintiff after first meeting separately with each of the following individuals, in this
5 order: Vincent, Longo, Sisterman, Gordon Clark, and Langejans. Each person was
6 individually informed that the internal investigation was complete, to stop talking about
7 others which creates an uncomfortable environment, all will remain in the division, though
8 some uncomfortableness and tensions there is not a threat in the workplace. All were also
9 informed that each would participate in mandatory training titled "Respectful Workplace"
10 and all were offered to participate in a voluntary mediation coordinated through the City's
11 Equal Opportunity Programs Division ("EOPD"). They were also offered assistance
12 through Employee Assistance Program ("EAP").

13 120. Denies and alleges after the completion of the internal investigation in
14 February 2015 AC Laura Baker met with Plaintiff and informed about the investigation as
15 more fully set forth in paragraph 119, above. Defendant further alleges that AC Laura
16 Baker was not aware of any alleged concerns Plaintiff had about Capt. Langejans until
17 after Plaintiff filed a wrongful conduct complaint with the City's EOPD on or about March
18 25, 2015. Plaintiff never filed a memorandum or any complaint relating to Capt.
19 Langejans with AC Laura Baker or anyone in the Fire Prevention Division or TFD.

20 121. Denies and alleges the same as response to paragraph 119, above, which
21 discusses what AC Laura Baker told Plaintiff and others in the Fire Prevention Division
22 after completing her investigation.

23 122. Denies.

24 123. Alleges the internal investigation into the allegations against Capt. Langejans
25 resulted in him being issued a written reprimand and the findings of any violations of City
26 Administrative Directives and/or TFD policies are noted on said written reprimand and it
27 speaks for itself.

28

1 124. Admits that Capt. Langejans was issued a written reprimand after TFD's
2 internal investigation and alleges this disciplinary action was appropriate under the
3 circumstances and consistent with TFD's discipline matrix.

4 125. Admits Plaintiff filed a complaint with the City's EOPD on or about March
5 25, 2015, and denies all remaining allegations contained in paragraph 125 of Plaintiff's
6 TAC.

7 126. Defendant is without knowledge or information sufficient to form a belief as
8 to the truth of the material allegations contained in paragraph 126 of Plaintiff's TAC and,
9 therefore, denies the same.

10 127. Defendant is without knowledge or information sufficient to form a belief as
11 to the truth of the material allegations contained in paragraph 127 of Plaintiff's TAC and,
12 therefore, denies the same.

13 128. Upon information and belief, admits on or about July 29, 2015, EOPD
14 Investigator Matthew Larsen submitted an Investigative Summary to Martha Durkin, the
15 City Manager at the time, addressing his portion of the investigation into Plaintiff's EOPD
16 complaint filed on March 25, 2015. Defendant alleges EOPD Sr. Equal Opportunity
17 Specialist, Martina Macias was tasked with investigating Plaintiff's allegations of
18 discrimination and/or harassment also contained in the EOPD complaint she filed on
19 March 25, 2015, and she submitted her findings as to these allegations in a separate
20 Memorandum contained within the EOPD investigation file. Defendant also alleges that
21 on July 29, 2015, Assistant City Manager, Julianne Hughes, concurring with Martina
22 Macias findings and directed TFD to address EOPD's assertions about TFD's internal
23 investigation and the nepotism issue. On August 18, 2015, AC Laura Baker submitted a
24 response as directed by the City Manager's Office.

25 129. Admits on June 18, 2105, Martina Macias, Sr. Equal Opportunity Specialist
26 with the City's EOPD did a separate analysis of the interviews conducted during Matthew
27 Larsen's investigation and she made a finding that there was no information which
28 supported a prima facie case of retaliation, discrimination, or harassment. Defendant

1 alleges Investigator Matthew Larsen's findings as to his portions of the EOPD
2 investigation are contained in his Investigative Summary, and the content of said summary
3 speaks for itself.

4 130. Admits that Investigator Matthew Larsen made a finding that because
5 Plaintiff and her husband, Gordon Clark, were working in a particularly small sized
6 division it appeared there was a violation of the City's Administrative Directive regarding
7 nepotism. Defendant denies the remaining material allegations contained in paragraph 130
8 of Plaintiff's TAC and alleges Plaintiff has suffered no adverse employment action.

9 131. Denies.

10 132. Upon information and belief, admits that Plaintiff's husband Gordon Clark
11 was notified that he would be reassigned to Operations effective August 22, 2015, and
12 alleges this assignment was partly because of TFD's review of its nepotism policy, but this
13 move was already being contemplated as part of TFD's succession planning. Defendant
14 further alleges Gordon Clark was on the promotional list for Battalion Chief ("BC") prior
15 to the EOPD investigation and there had been discussions between Gordon Clark and AC
16 Laura Baker regarding him moving back to Operations before being promoted to BC.

17 133. Denies and alleges that on or about August 22, 2015, Gordon Clark was
18 transferred from his assignment as a Captain in Fire Prevention to a temporary assignment
19 at EN#3. Defendant also alleges that upon information and belief Gordon Clark may have
20 worked an alternate 4/10 schedule while in Fire Prevention. On his first shift in
21 Operations, Gordon Clark was assigned to EN#3 and continued to be scheduled at EN#3
22 from August 23, 2015 through November 13, 2015, he then bid to LD#1. Further alleges
23 LD#1 is a specialty assignment and Gordon Clark received a 5% increase in pay from
24 November 17, 2015 through January 7, 2016, thereafter he was promoted to Battalion
25 Chief. Defendant further alleges that upon being notified that he was going to be
26 reassigned to Operations, Gordon Clark had the opportunity to bid to any opening to
27 change his assignment.

28

1 134. Denies and alleges the nepotism policy was undergoing revisions after the
2 EOPD investigation and there were several personnel moves as a result of the EOPD
3 investigation and the direction that was given from the City Manager's Office to address
4 any potential issues of nepotism in the TFD.

5 135. Admits that when comparing the pay scale of a 40 hour a week Captain to a
6 56 hour a week Captain, the 40 hour a week Captain makes more, but alleges that the
7 actual amount earned and whether the swing shift is less desirable depends upon various
8 factors. Defendant also alleges that Gordon Clark was temporarily assigned to EN#3 and
9 then bid to LD#1 as more full set forth in paragraph 128, above.

10 136. Denies.

11 137. Denies and alleges Plaintiff has never been retaliated against.

12 138. Denies and alleges the nepotism policy was undergoing revisions after the
13 EOPD investigation and there were several personnel moves as a result of the EOPD
14 investigation and the direction that was given from the City Manager's Office to address
15 any potential issues of nepotism in the TFD or see 134 above.

16 139. Defendant is without knowledge or information sufficient to form a belief as
17 to the truth of the material allegations contained in paragraph 139 of Plaintiff's TAC and,
18 therefore, denies the same.

19 140. Admits.

20 141. Defendant is without knowledge or information sufficient to form a belief as
21 to the truth of the material allegations contained in paragraph 141 of Plaintiff's TAC and,
22 therefore, denies the same.

23 142. Admits.

24 143. Admits.

25 144. Admits that an Educational Counseling was issued to Plaintiff on March 24,
26 2016, for inappropriate conduct and violation of directive or policy and the contents of the
27 Educational Counseling documentation speaks for itself. Defendant denies the remaining
28 allegations contained in paragraph 144 of Plaintiff's TAC.

1 145. Admits on April 7, 2016, AC Baker and DC Carsten interviewed Plaintiff
2 and seven other TFD employees regarding Plaintiff's wrongful conduct complaint number
3 16-03-001.

4 146. Admits on April 13, 2016, after reviewing Plaintiff's wrongful conduct
5 complaint and conducting interviews, AC Baker submitted a Response to Wrongful
6 Conduct Complaint #WC 16-03-001 to Chief Critchley. Further alleges AC Baker found
7 no evidence establishing mismanagement or misconduct and concluded the complaint was
8 unfounded.

9 147. Admits on April 16, 2016, Chief Critchley sent a memorandum to EOPD
10 regarding Plaintiff's wrongful conduct complaint number 16-03-001 and included in the
11 memorandum is a statement that "The department was not able to substantiate the claim of
12 mismanagement and misconduct." Also, alleges the content of the memorandum speaks
13 for itself.

14 148. Admits on April 27, 2016, Chief Critchley provided Plaintiff with a
15 memorandum regarding her reassignment back to Operations. Alleges the memorandum
16 provides Plaintiff with the reasons for the transfer or reassignment and the content speaks
17 for itself.

18 149. Admits. Also, see paragraph 148 above.

19 150. Admits that on May 13, 2016, TFD sent a memorandum informing all fire
20 personnel of their updated Seniority within Rank and formally announcing that the
21 procedure already used for calculating Seniority within Rank, which was agreed upon by a
22 representative of Local 479 and Fire Administration, would now be official TFD standard
23 effective May 1, 2016. Defendant denies the remaining material allegations contained in
24 paragraph 150 of Plaintiff's TAC.

25 151. Denies that it was a new policy. Also, see paragraph 150 above.

26 152. Denies.

27 153. Denies.

28 154. Denies.

1 155. Denies.

2 156. Admits that on April 27, 2016, when Plaintiff was informed of her
3 reassignment back into Operations she was also told that AC Garcia would be informing
4 her of the training she would be required to attend at the Public Safety Training Academy
5 to begin on May 2, 2016. Alleges this training was to provide her with support and ensure
6 her success back in the field.

7 157. Alleges that Plaintiff's private physician, Michael Purkis, signed a Work
8 Status Verification on May 6, 2016, placing Plaintiff on modified duty for a ventral hernia
9 until Plaintiff received surgery. Defendant denies the remaining material allegations in
10 paragraph 157 of Plaintiff's TAC.

11 158. Admits.

12 159. Denies and alleges on May 11, 2016, Plaintiff was assigned to light duty
13 under DC of Communications, Chris Conger. Due to the location of Plaintiff's work at
14 Fire Central, DC Conger was unable to supervise Plaintiff. Plaintiff was therefore
15 assigned to AC Laura Baker, DC Chris Conger's direct supervisor. Further alleges that
16 Plaintiff did not turn in her light duty paperwork until the morning of May 11, 2016.

17 160. Denies. Also, see paragraph 159 above.

18 161. Admits. Also, see paragraph 159 above.

19 162. Denies.

20 163. Admits.

21 164. Denies.

22 165. Admits that Plaintiff filed a Wrongful Conduct Complaint, which was
23 submitted on June 2, 2016. The content of the complaint speaks for itself.

24 166. Admits that on June 13, 2016, CFO/Assistant City Manager, Joyce K.
25 Garland, issued a memorandum after reviewing Plaintiff's complaint and corresponding
26 documentation. Alleges the content of the memorandum speaks for itself.

27

28

1 167. Denies and alleges that Plaintiff's initial assignment to light duty was in
2 communications. Plaintiff was then assigned to assist in the medical administration
3 division and then was reassigned back to the communications division.

4 168. Admits and alleges Plaintiff requested to demote to a Firefighter position.

5 169. Denies.

6 170. Admits.

7 171. Admits and further alleges that personnel part of the "\$150 club" must work
8 one shift as a paramedic in a calendar year. Defendant further alleges that the \$150.00 is
9 multiplied by 12 months and then divided into 26 equal payments of \$69.23.

10 172. Admits that DC Conger emailed Plaintiff's \$150 club form near the close of
11 business on the Friday before the last day of the pay period.

12 173. Denies.

13 174. Denies.

14 175. Admits.

15 176. Denies.

16 177. Denies and alleges that Gordon Clark did not pass probation as a Battalion
17 Chief and was therefore reverted back to his prior classification of Captain, effective
18 December 25, 2016.

19 178. Denies.

20 179. Admit.

21 180. Denies.

22 **COUNT ONE**

23 **(Sex Discrimination in Violation of the Fair Labor**

24 **Standards Act, 29 U.S.C. § 207(r))**

25 181. Defendant hereby incorporates by reference the assertions and allegations
26 contained in paragraphs 1-180 above as though fully set forth herein.

27 182. Paragraph 182 is a legal conclusion and no response is necessary from
28 Defendant.

1 183. Denies.

2 184. Denies.

3 185. Denies.

4 186. Denies that Defendant violated any constitutional, statutory, common law, or
5 other right of the Plaintiff and, therefore, denies that Plaintiff was damaged in any way by
6 Defendant.

7 **COUNT TWO**

8 **(Retaliation in Violation of the Fair Labor**

9 **Standards Act, 29 U.S.C. § 215)**

10 187. Defendant hereby incorporates by reference the assertions and allegations
11 contained in paragraphs 1-186 above as though fully set forth herein.

12 188. Paragraph 188 is a legal conclusion and no response is necessary from
13 Defendant.

14 189. Denies.

15 190. Denies.

16 191. Denies.

17 192. Denies that Defendant violated any constitutional, statutory, common law, or
18 other right of the Plaintiff and, therefore, denies that Plaintiff was damaged in any way by
19 Defendant.

20 **COUNT THREE**

21 **(Sex Discrimination in Violation of Title VII of the**

22 **Civil Rights Act of 1964, as Amended)**

23 193. Defendant hereby incorporates by reference the assertions and allegations
24 contained in paragraphs 1-192 above as though fully set forth herein.

25 194. Admits that the City of Tucson is an employer within the meaning of the
26 Civil Rights Act of 1964, as amended by the Pregnancy Discrimination Act, 42 U.S.C. §§
27 2000e et seq. (Title VII).

28 195. Denies.

1 196. Denies.

2 197. Denies that Defendant violated any constitutional, statutory, common law, or
3 other right of the Plaintiff and, therefore, denies that Plaintiff was damaged in any way by
4 Defendant.

5 **COUNT FOUR**

6 **(Retaliation in Violation of Title VII of the**
7 **Civil Rights Act of 1964, as Amended)**

8 198. Defendant hereby incorporates by reference the assertions and allegations
9 contained in paragraphs 1-197 above as though fully set forth herein.

10 199. Paragraph 199 is a legal conclusion and no response is necessary from
11 Defendant.

12 200. Denies.

13 201. Denies that Defendant violated any constitutional, statutory, common law, or
14 other right of the Plaintiff, and alleges that the content of the City's EOPD investigation
15 speaks for itself.

16 202. Denies.

17 203. Denies.

18 204. Denies that Defendant violated any constitutional, statutory, common law, or
19 other right of the Plaintiff and, therefore, denies that Plaintiff was damaged in any way by
20 Defendant.

21 **COUNT FIVE**

22 **(Retaliation Discrimination in Violation of Title VII of the**
23 **Civil Rights Act of 1964, as Amended)**

24 205. Defendant hereby incorporates by reference the assertions and allegations
25 contained in paragraphs 1-204 above as though fully set forth herein.

26 206. Paragraph 206 is a legal conclusion and no response is necessary from
27 Defendant.

28 207. Denies.

1 208. Denies.

2 209. Denies that Defendant violated any constitutional, statutory, common law, or
3 other right of the Plaintiff and, therefore, denies that Plaintiff was damaged in any way by
4 Defendant.

5
6 **GENERAL DENIAL**

7 210. Defendant denies any allegation not specifically admitted in this Answer.

8 **AFFIRMATIVE DEFENSES**

9 211. Alleges that Plaintiff's Third Amended Complaint fails to state a claim upon
10 which relief can be granted.

11 212. Alleges Plaintiff was not subjected to any adverse employment action.
12 Alleges that all employment actions taken with regard to Plaintiff were because of
13 legitimate business reasons.

14 213. Alleges Defendant exercises reasonable care in preventing and/or correcting
15 any alleged sex discrimination, and Plaintiff failed to take advantage of the corrective or
16 preventative opportunities provided to her as a City employee. Thus, Defendant is
17 protected under the *Ellerth-Faragher* defense for Plaintiff's state and federal claims.
18 *Burlington Industries v. Ellerth*, 524 U.S. 742 (1998) and *Faragher v. City of Boca Raton*,
19 524 U.S. 775 (1998).

20 214. Alleges Plaintiff Carrie Clark did not mitigate or may not have mitigated her
21 damages which may have been incurred as she alleges in her Amended Complaint.

22 215. Alleges that Defendant is without knowledge or information sufficient to
23 form a belief as to all the affirmative defenses that may become available as discovery
24 progresses. Therefore, Defendant asserts all the affirmative defenses available pursuant to
25 Federal Rules of Civil Procedure, Rules 8 and 12, A.R.S. § 12-820, *et seq.*, A.R.S. § 12-
26 821, *et seq.*, A.R.S. § 41-1463, *et seq.* and any other defenses raised by discovery, as if
27 such defenses were set forth specifically herein.

28 216. Plaintiff has failed to comply with A.R.S. §12-821.01.

